RECORD, CASE No. 13,406.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 279.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, AND HENRY STRAHLHEIM, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 23, 1888.

RECORD, CASE No. 13,406.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 279.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, AND HENRY STRAHLHEIM, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Summons	3	2
Certiorari	4	2
Bill of particulars	6	4
Complaint	8	5
Answer	11	6
Minutes of trial	14	7
Judgment	15	8
Consent and order to enter judgment *nunc pro tunc*	15	8
Bill of exceptions	17	8
Statement of plaintiffs' case	18	9
Testimony of Siegmund Meyerheim	19	9
Duncan A. Grant	20	10
William Trevor	21	11
Definitions from Webster's Dictionary	23	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1891.

	Original.	Print.
Judge's certificate to bill of exceptions	23	12
Assignment of errors	25	12
Joinder in error	27	13
Bond	29	14
Citation	31	15
Proof of service of citation	32	15

1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Siegmund Meyerheim, William Kempner, and Henry Strahlheim, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened, to the great damage of the said Siegmund Meyerheim, William Kempner, and Henry Strahlheim, as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the fourth Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States, this 10th day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

[L. S.] Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 [Endorsed:] E. & A. A. 791. 8257. Supreme Court of the United States. Siegmund Meyerheim *et al.*, plaintiffs in error, *vs.* William H. Robertson, defendant in error. Writ of error. Stanley, Clarke & Smith, attorneys for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this 11 day of October, 1888. Stephen A. Walker, attorney for defendant in error. U. S. circuit court. Filed Oct. 11, 1888. John A. Shields, clerk. 145, ch'd.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Siegmund Meyerheim, William Kempner, and Henry Stahlheim, plaintiffs in error, against William H. Robertson, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 18th day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 Superior Court of the City of New York.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, and HENRY STROHLHEIM, Plaintiffs, *against* WILLIAM H. ROBERTSON, Defendant. } Summons. No. 7.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Nov. 18th, 1882.

STANLEY, CLARKE & SMITH,
Plaintiffs' Attorneys.

Office, No. 160 Broadway, New York city.

(Endorsed:) 8257. No. 7. N. Y. superior court. Siegmund Meyerheim & o'rs, plaintiffs, against William H. Robertson, defendant. U. S. attorney's office. Received Dec. 2, 1882. Summons. Stanley, Clarke & Smith, plaintiffs' attorneys, 160 Broadway, New York city. Nov. 18, '82. C. S. T.

4 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain

cause commenced before you against William H. Robertson, defendant, by Siegmund Meyerheim & *al.*, plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 19 day of December, 1882; as fully and amply as the same are remaining before you by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 14 day of December, in the year one thousand eight hundred and eighty-two.

JOSEPH M. DEUEL, *Clerk.*

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

5 (Endorsed:) 8257. U. S. circuit court. Siegmund Meyerheim & *al. vs.* William H. Robertson. Copy. Certiorari. Stewart L. Woodford, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Dec. 14, 1882. Yours, Stewart L. Woodford, U. S. attorney, attorney for defendant. To S., C. & S., plaintiffs' attorneys. Due service of a copy of the within and of the above notice is hereby admitted. New York, Dec. 14, 1882. Stanley, Clarke & Smith, plaintiffs' attorneys.

Bill of Particulars.

Name of importer (for all the importations): **Meyerheim, Kempner & Co.**

Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally acted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
Thread lace	Liverpool	City of Berlin	1881. Dec. 1	1881. Dec. 20	230 10	1881. Dec. 21	1882. July 25	1882. July 25	None rec'd.
Do.	Havre	Labrador	1882. Feb'y 6	1882. Feb'y 24	38 40	1882 Feb'y 25	May 5	May 5	"
Do.	do.	Amerique	" 22	M'ch 10	1 10	May 11	" 5	" 5	"
Do.	Bremen	Oder	" 27	" 13	31 00	M'ch 13	June 5	June 5	"
Do.	Havre	St. Lament	" 28	" 17	1 50	" 18	May 12	May 12	"
Do.	do.	France	M'ch 7	" 22	67 50	" 24	June 9	June 9	"
Do.	Bremen	Habsburg	" 6	" 29	29 80	" 29	" 5	" 5	"
Do.	do.	do.	" 6	" 29	29 80	" 30	" 5	" 5	"
Do.	Havre	Canada	" 14	" 31	48 00	" 31	" 16	" 16	"
Do.	do.	France	Ap'l 18	May 4	76 30	May 4	May 11	May "	"
Do.	Bremen	Habsburg	June 19	July 12	53 40	July 12	Aug. 26	Aug. 26	"
Do.	Hamburg	Cimbria	" 17	" 10	157 00	" 10	" 12	" 12	"

7 [Endorsed:] 8257. U. S. circuit court, southern district of New York. Seigmund Meyerheim & ano. against William H. Robertson. Bill of particulars. New York, Dec. 23, 1882. To S. L. Woodford, Esquire, defendant's attorney. Sir: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiffs' bill of particulars. Stanley, Clarke & Smith, plaintiffs' attorneys, 160 Broadway. U. S. attorney's office. Received Dec. 23, 1882.

8 Circuit Court of the United States for the Southern District of New York.

SEIGMUND MEYERHEIM, WILLIAM KEMPNER, & HENRY STROHLHEIM, Plaintiffs,
against
WILLIAM H. ROBERTSON, Defendant.
} Complaint.

Plaintiffs complain—

1st. That defendant was during the times hereinafter named collector of customs of the United States at the port of New York.

2d. That plaintiffs were during said times partners in trade under the firm name of Meyerheim, Kempner & Co., and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiffs as and for duties thereon, viz:

Three thousand and fifty-eight dollars.

4th. That by the laws of the United States the true duty upon said goods was two thousand two hundred and ninety-three & $\frac{50}{100}$ dollars; but plaintiffs, in order to obtain said goods, were compelled to pay the sum of seven hundred and sixty-four & $\frac{50}{100}$ dollars, in gold coin of the United States, in excess of the amount required by law.

9 5th. That plaintiffs filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

6th. That plaintiffs made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

7th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury and of his decision thereon,

together with the other particulars required by law, and is made a part hereof.

8th. That said sum so exacted as aforesaid has never been repaid to plaintiffs and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for seven hundred and sixty-four & $\frac{50}{100}$ dollars in United States gold coin, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiffs.

10 (Endorsed:) 8257. United States circuit court. Seigmund Meyerheim & o'rs against William Robertson. 7. Complaint. To S. L. Woodford, Esq., att'y for def't. Stanley, Clarke & Smith, pl'ffs' attorneys, 160 Broadway, New York city. U. S. attorney's office. Received Dec. 23, 1882.

11 United States Circuit Court, Southern District of New York.

SIEGMUND MEYERHEIM & *al.*
versus
W. H. ROBERTSON, Collector, etc.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action.

1. He admits he was at the times in said complaint mentioned *complaint mentioned* collector of the port of New York, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States under the laws thereof upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

2. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by (them) to the United States, and not otherwise, and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury and for and on account of the United States, and were forthwith, thereafter, and before the commencement of this action or the service of any protest paid into the Treasury of the United States, and that the amount of said moneys so received from plaintiffs were the amounts due from (them) to the United States according
12 to the rate of duty imposed by law upon the several articles of merchandise by (them) imported andassessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' import entry thereof were collected or received by defendant from the plaintiffs.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages re-

ferred to in the said complaint by the marks and numbers and description there given except in so far as to state, and defendant, herein answering, doth aver and state, that said merchandise was not dutiable, according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant, further answering, admits that plaintiffs filed with defendant certain protests; but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as (they) may be advised.

V. And as to any other allegations in said complaint contained not hereinbefore fully answered or admitted defendant denies the same and each thereof and leaves the plaintiffs to make such proof thereof as (they) may be advised.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEWART L. WOODFORD,

13 *United States Attorney, Attorney for Defendant.*

(Endorsed:) 8257. U. S. circuit court, southern district of New York. Siegmund Meyerheim & *al. vs.* W. H. Robertson, collector, etc. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. Due service of a copy of the within answer is hereby admitted. New York, Dec. 29, 1882. Stanley, Clarke & Smith, plaintiffs' attorney-. To S., C. & S., plaintiffs' attorney-.

14 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, Tuesday, & Wednesday, the 21, 26, & 27 days of June, in year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable E. Henry Lacombe, circuit judge.

SIEGMUND MEYERHEIM *et al.*
vs.
WILLIAM H. ROBERTSON. } N. S. 8257.

Now come the plaintiffs, by Stephen G. Clarke, Esq., their attorney, and moves the trial of this cause; also comes the defendant, by Macgrane Coxe, Esq., ass't U. S. att'y, his attorney; thereupon a jury is empaneled and the cause proceeds to trial. After hearing the evidence of the parties and the argument of counsel—Edwin B. Smith, Esqr., for the plaintiffs, and MR. Coxe for the defendant—the jury, by direction of the court, find a verdict for the defendant. Stay of sixty days is granted to the plaintiffs to make and serve a case, with leave to turn the same into a bill of exceptions.

JOHN A. SHIELDS, *Clerk.*

15 United States Circuit Court, Southern District of New York.

SIEGMUND MEYERHEIM & *al.*
vs.
WILLIAM H. ROBERTSON. } Judgment, ——, 188–.

The issues in this action having been brought on for trial before Mr. Judge Lacombe and a jury at a circuit court of the April term, 1888, and the issues having been tried and a verdict for the defendant having been duly rendered on the — day of June, 1888, and his costs having been adjusted at $48.85:

Now, on motion of Stephen A. Walker, United States attorney for defendant—

It is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

We hereby consent that the foregoing judgment be entered *nunc pro tunc* as of October 6th, 1888.

Dated Oct. 10, 1888.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiff-.
STEPHEN A. WALKER,
U. S. Att'y, Att'y for Def't.

Ordered accordingly.

E. HENRY LACOMBE.

Judgment signed this 10th day of Oct., 1888, *nunc pro tunc* as of Oct. 6th, 1888.

JOHN A. SHIELDS, *Clerk.*

16 [Endorsed:] 8257. United States circuit court. Siegmund Meyerheim & *al. vs.* Wm. H. Robertson. Judgment-roll. Stephen A. Walker, United States attorney, attorney for defendant. Costs, $48.85. U. S. circuit court. Filed Oct. 10, 1888, 3 p. m, *nunc pro tunc* as of Oct. 6, 1888, per order of court. John A. Shields, clerk.

17 United States Circuit Court, Southern District of New York.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, and HENRY STRAHLHEIM
against
WILLIAM H. ROBERTSON. } Bill of Exceptions.

Afterwards, to wit, on the twenty-sixth day of June, 1888, at a stated term of this court begun and holden at the city of New York, to wit, on the 26th and 27th days of June, 1888, before the Honorable E. Henry Lacombe, circuit judge of the United States for the second circuit, the aforesaid issue so joined by the said parties as aforesaid, as by the record more fully appears, came on to be tried by a jury duly empannelled and sworn for that purpose, the said plaintiffs being represented by Charles Curie, Esq., and Stanley,

Clarke & Smith, attorneys, and the defendant by Hon. Stephen A. Walker, U. S. attorney, and Macgrane Coxe, assistant United States attorney, and the trial of said cause was continued into the following day, June 27, 1888, and in the course of said trial the said counsel for the plaintiffs did take and allege sundry exceptions to the rulings, directions, and charge of the court and to the refusals of the court to give certain instructions to the jury, as then and there prayed for by them, and to the refusal of the court to submit said cause to the jury, which said exceptions are hereinafter severally set forth.

18 To maintain the said issues on the part of the said plaintiffs it was shown that the plaintiffs, merchants and importers doing business in New York, in the years 1881 and 1882 imported into New York, of which port defendant was then collector, certain laces made by machinery out of linen thread and with them certain laces of the same material but made by hand; that the defendant, as such collector, assessed and exacted duty upon all laces as "manufactures of flax or of which flax shall be the component material of chief value" at forty per cent., while the plaintiffs claimed they were all dutiable as "thread lace" at only thirty per centum ad valorem; the plaintiffs paid duty on all these importations as manufactures of flax at forty per centum under protest, and appealed to the Secretary of the Treasury, as required by law, to enable them to recover such payment. There was no dispute as to the sufficiency of the protest, the regularity of the appeal, or to the seasonable bringing of this suit; everything was done properly and in due time. It was shown and admitted that after this suit was brought the Secretary of the Treasury refunded to plaintiffs all sums by him exacted upon such of the above-mentioned importations of laces of linen thread as were made by hand, leaving only a present controversy as to those laces of linen thread which were manufactured by machinery. All these laces were known, bought, and sold as "torchons," whether made by hand or by machinery. The issue presented was whether or not machine-made torchons were dutiable as "thread lace" or as "manufactures of flax not otherwise provided for."

19 After introduction of formal evidence of the entries, protest, payment, and appeal, etc., and reading the dictionary definitions (from Webster's Dictionary, last edition; McElrath's Commercial Dictionary, and Simmons' Commercial Dictionary) of thread lace as meaning "lace made of linen thread"—

SIEGMUND MEYERHEIM, a plaintiff, was called, and testified that he had been engaged in importing all kinds of laces into New York for little over thirty years; that the laces which were the subject of the present litigation were made of linen thread and "are a linen lace—torchon lace;" that he called them a thread lace, but — are known as "torchon laces," so bought and sold, "torchon" being a specific name for this particular kind of lace.

Q. What I mean is that "torchon" is a division of the general article of thread lace, just as a derby is a division of the word hat?

A. Yes; exactly.

It was then specifically admitted by the plaintiffs that—

"In almost all of these importations there were two classes of goods—hand-made torchon lace and machine-made torchon lace—and that upon the hand-made torchon lace the Government has already refunded, and plaintiffs claim now only on the machine-made torchon."

Mr. Meyerheim then testified to the goods, of which samples had been put in, being all machine-made; that he never heard them bought and sold as thread laces but only as torchons—invariably so called; that he knew there was a thread lace, a good many of them, different from his importations, a sample of which thread lace, shown him by Mr. Coxe, the witness recognized, saying:

20 "That is one kind, certainly—Saxony. It is what is called a thread collar."

Mr. COXE then put these questions, answered as appears:

Q. Is not that a lace which is bought and sold under the name of thread lace in your store?

A. As far as that goes, you have got black silk laces also which are sold under the name of thread lace.

Q. And you also have white linen laces, have you not?

A. Certainly; we must have a name for every article.

Q. Is not that the article?

A. That is thread lace.

Q. As known in trade and commerce?

A. As known in trade and commerce.

The same last referred to was marked Exhibit 10.

The plaintiffs then rested.

The Government first called as a witness DUNCAN A. GRANT, who testified to an experience of forty-five years in the lace business in the city of New York.

He then testified in substance as follows: There was a kind of lace made of linen or linen and cotton bought and sold in this country, under the name of thread lace, in 1861 and thereabouts and down to 1875. Exhibit 10 is one of the articles so known. It is a thread-lace collar. I am acquainted with the names under which articles represented by Plaintiffs' Exhibits 8 and 9 were bought and sold. I understand them to be woven torchon lace. By woven torchon I mean machine-made torchon as distinguished from hand-made torchon.

21 By Mr. CURIE:

Q. Mr. Grant, is that the only kind of lace that is known as thread lace (showing witness Exhibit 10)?

A. No, sir. There are a very great number of laces known as thread lace.

The direct examination being resumed, the witness testified: The other kind of thread laces are made, some of them silk; mostly of linen, however. There are also laces made of cotton that are called thread; Valenciennes lace is called thread; it is considered thread, and made of cotton. Some Valenciennes laces are made of linen.

Q. But this is the kind of lace called linen thread lace?

A. I think, if you will allow me to express myself for a word there, that it is more generally applied to real lace.

Q. When you say real lace, what do you mean by that?

A. Made in that way.

Q. Hand-made lace?

A. Yes, sir; or made by the point needle. Point lace is made by the needle instead of spools. I mean by real lace hand-made pillow lace, or made by the point needle. Point lace is made by the needle instead of spools.

After recess the Government called WILLIAM TREVOR for the defense, who testified to eighteen years' experience in the lace business, commencing in 1868.

He testified that plaintiffs' importations were known as "torchons;" that from 1868 to 1875 there was a well-known article in trade
22 and commerce known as thread lace, made of linen. He selected Exhibit 10 from the samples as such a lace, saying, "That is a thread lace." He stated that thread lace is always hand-made; not made on a machine, but on a cushion or pillow, indicating Exhibit 10 as such article. That if a person came in where he was selling laces and asked for a thread lace he should never think of taking down any such thing as Plaintiffs' Exhibit 9, but "out of all that collection (of sample exhibits) I should take down that one article (Exhibit 10) for thread lace."

He said hand-made torchons were worth at least three times as much as machine-made torchons of same width and degree of fineness. He identified Exhibit 11 as a hand-made torchon.

Upon cross-examination he reiterated that Exhibit 10 was the only one he would hand down as a thread lace, and said he would not call Exhibit 11—the hand-made torchon—a thread lace.

Re-examined by Mr. COXE, after repeating that the distinguishing characteristic of thread lace was that it was made by hand and not by machinery, he was asked (by Mr. Coxe) this question, and gave the subjoined answer:

"Q. In that view, do you want to qualify your testimony with regard to Exhibit 11 or not?

A. If you want to know what is thread lace, according to my knowledge and my experience extending over twenty years, I will say that there is only one thing in this collection that I can
23 pick out as thread lace, or which is known commercially as thread lace, and that is this collar" (Exhibit 10).

Defendant's counsel then read the definitions of the words lace and thread from Webster's Dictionary, edition of 1849, as follows:

"Lace: A work composed of threads interwoven into a net and worked on a pillow with spindles or pins."

"Thread: A very small twist of flax, wool, cotton, silk, or other fibrous substance drawn out to considerable length."

The defendant then rested.

No further testimony being offered except proof of the amount paid in excess of the rate on thread lace and the Treasury regulations of 1857, the United States attorney requested the court to direct a verdict for the defendant, and the plaintiffs claimed to go to the jury. The court directed a verdict for the defendant and the plaintiffs excepted.

Thereupon the counsel for the plaintiffs did then and there on behalf of said plaintiffs except to the decision, ruling, and instruction of the court instructing the jury to render a verdict for the defendant and to his refusal to submit the cause to the jury, an exception being noted as to each such request and refusal.

And because none of the said exceptions so offered and made to the opinions, instructions, rulings, and decisions of the court do appear upon the record of the said trial, now, therefore, on the prayer of the plaintiffs, by their counsel, the said judge has to this bill of exceptions put his seal *nunc pro tunc* as of said 27th day of June, 1888.

24 E. HENRY LACOMBE,
Circuit Judge.

Consented to.
STEPHEN A. WALKER,
U. S. Att'y, Att'y for Def't.

Consented to.
CHAS. CURIE,
Att'y for Pl'ff.

(Endorsed:) 8257. U. S. circuit court, southern district of New York. Siegmund Meyerheim *et als. vs.* William H. Robertson. Bill of exceptions. Charles Curie, Esq., attorney for plaintiffs, 44 Exchange place, N. Y. city. U. S. circuit court. Filed Oct. 9, 1888. John A. Shields, clerk.

25 Supreme Court of the United States.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, & Henry Strahlheim, Plaintiffs in Error, *vs.* WILLIAM H. ROBERTSON, Defendant in Error.	Assignment of Errors.

Afterwards, to wit, on the fourth Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, come the said plaintiffs in error, by Stanley, Clarke & Smith,

their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff- against the said defendant.

And the said plaintiffs pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that *he* they, the said plaintiffs, may be restored to all things which *he* they *has* have lost by occasion of said judgment, &c.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiffs in Error.

26 [Endorsed:] 8257. United States Supreme Court. Siegmund Meyerheim *et al.*, plaintiffs in error, *vs.* William H. Robertson, defendant in error. Assignment of error. Stanley, Clarke & Smith, attorneys for plaintiffs in error. Due service of a copy of the within assignment of error is hereby admitted this 11th day of October, 1888. Stephen A. Walker, attorney for defendant in error. To —— ——, attorney for — in error. U. S. circuit court. Filed Oct. 11, 1888. John A. Shields, clerk.

27 Supreme Court of the United States.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, & HENRY STRAHLHEIM
vs.
WILLIAM H. ROBERTSON, Defendant in Error. } Joinder in Error.

And afterwards, to wit, on the fourth Monday of October, in said term, the said defendant in error, by Stephen A. Walker, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

STEPHEN A. WALKER,
Attorney for Defendant in Error.

28 [Endorsed:] 8257. United States Supreme Court. Siegmund Meyerheim & *al.*, plaintiffs in error, *vs.* W. H. Robertson, defendant in error. Joinder in error. Stephen A. Walker, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 11th day of October, 1888. Stanley, Clarke & Smith, attorney- for plaintiffs in error. To Messrs. Stanley, Clarke & Smith, attorney- for plaintiff- in error. U. S. circuit court. Filed Oct. 11th, 1888. John A. Shields, clerk.

29 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

SIEGMUND MEYERHEIM, WILLIAM KEMPNER, and HENRY STRAHLHEIM *vs.* WILLIAM H. ROBERTSON. } Bond for Damages and Costs.

Know all men by these presents that we, Julius Binge, of the city of New York, and Wm. M. Waterbury, Jr., of the city of Brooklyn, are held and firmly bound unto the above-named William H. Robertson in the sum of two hundred and fifty dollars, to be paid to the said William H. Robertson; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the eighth day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas the above-named Siegmund Meyerheim, William Kempner, and Henry Strahlheim have prosecuted their writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Siegmund Meyerheim *et al.* shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JULIUS BINGE. [L. S.]
WILLIAM M. WATERBURY, JR. [L. S.]

Sealed and delivered and taken and acknowledged this eighth day of October, 1888, before me—

M. J. BINGER.

30 [Endorsed:] 8257. U. S. circuit court, southern district of New York. Siegmund Meyerheim *et al. vs.* William H. Robertson. Bond for costs on writ of error. Approved as to form, amount, and sufficiency of sureties. E. Henry Lacombe. U. S. circuit court. Filed Oct. 10, 1888. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Julius Binge and William M. Waterbury, Jr., being duly sworn, depose and say that they each individually are worth the sum of two hundred & fifty dollars over and above all his just debts and liabilities.

JULIUS BINGE.
WILLIAM M. WATERBURY, JR.

Sworn to this eighth day of Oct., A. D. 1888, before me—

M. J. BINGE,
[L. S.] *Notary Public, N. Y. C., No.* 74.

31 UNITED STATES OF AMERICA, *ss:*

To William H. Robertson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the fourth Monday of October, eighteen hundred and eighty-eight, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Siegmund Meyerheim, William Kempner, and Henry Strahlheim are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated N. Y., October 10th, 1888.

E. HENRY LACOMBE.

32 [Endorsed:] E. & A. A. 791. 8257. U. S. Supreme Court. Siegmund Meyerheim *et al.*, plaintiffs in error, against William H. Robertson, defendant in error. Citation. Stanley, Clarke & Smith, attorneys for plaintiffs in error. Due service of a copy of the within citation is hereby admitted this 11 day of October, 1888. Stephen A. Walker, attorney for defendant in error. U. S. circuit court. Filed Oct. 11, 1888. John A. Shields, clerk.

Endorsed on cover: Case No. 13,406. S. New York C. C. U. S. No. 279. Siegmund Meyerheim, William Kempner, and Henry Strahlheim, plaintiffs in error, *vs.* William H. Robertson, late collector of the port of New York. Filed October 23, 1888.

MAR 31 1892
JAMES H. McKENNEY,
CLERK.

C. S. Duggynski Printing Business, Washington, D. C.

Supreme Court of the United States,

OCTOBER TERM, 1891.

SIEGMUND MEYERHEIM ET ALS.
vs.
WILLIAM H. ROBERTSON, Collector.
No. 279.

BRIEF FOR PLAINTIFFS.

Statement.

This action was originally brought to recover excess of duty exacted upon certain laces made of linen thread, all known by the specific name of "torchons," some of them being hand-made, and the rest produced by machinery.

Pending this suit, the defendant-collector partly reliquidated the entries, and refunded to plaintiffs so much of the excessive duties exacted from them as was assessed upon the hand-made torchons therein. Thereafter, this action was prosecuted to recover the retained balance of the excess, based upon the machine-made laces.

To maintain the said issues on the part of the said plaintiffs it was shown that the plaintiffs, merchants and importers doing business in New York, in the years 1881 and 1882 imported into New York, of which port

defendant was then Collector, certain laces made by machinery out of linen thread and with them certain laces of the same material but made by hand; that the defendant, as such Collector, assessed and exacted duty upon all these laces as "manufactures of flax or of which flax shall be the component material of chief value" at forty per cent., while the plaintiffs claimed they were all dutiable as "thread lace" at only thirty *per centum ad valorem;* the plaintiffs paid duty on all these importations as manufactures of flax at forty per centum under protest, and appealed to the Secretary of the Treasury, as required by law, to enable them to recover such payment. There was no dispute as to the sufficiency of the protest, the regularity of the appeal, or to the seasonable bringing of this suit; everything was done properly and in due time.

It was shown and admitted that *after this suit was brought* the Secretary of the Treasury refunded to plaintiffs all sums exacted upon such of the above-mentioned importations of laces of linen thread as were made by hand; leaving only a present controversy as to those laces of linen thread which were manufactured by machinery.

All these laces were known, bought, and sold as "torchons," *whether made by hand or by machinery.*

The issue presented was whether or not machine-made torchons were dutiable as "thread lace" or as "manufactures of flax not otherwise provided for."

After introduction of formal evidence of the entries protest, payment, and appeal, etc., and reading the dictionary definitions (from Webster's Dictionary, last edition; McElrath's Commercial Dictionary, and Simmons' Commercial Dictionary) of "thread-lace" as meaning "lace made of *linen* thread,"

SIEGMUND MEYERHEIM, a plaintiff, was called, and testified that he had been engaged in importing all kinds of laces into New York for little over thirty years; that the laces which were the subject of

the present litigation were made of linen thread and "are a linen lace—torchon lace"; that he called them a thread lace, but they are known as "torchon laces," so bought and sold, "torchon" being a specific name for this particular kind of lace.

"Q. What I mean is that 'torchon' is a division of the general article of thread lace, just as a derby is a division of the word hat?

"A. Yes; exactly."

It was then specifically admitted by the plaintiffs that—

"In almost all of these importations there were two classes of goods—hand-made torchon lace and machine-made torchon lace—and that upon the hand-made torchon lace the Government has already refunded, and plaintiffs claim now only on the machine-made torchon."

Mr. Meyerheim then testified to the goods, of which samples had been put in, being all machine-made; that he never heard them bought and sold as thread laces but only as "torchons"—invariably so called; that he knew there was a thread lace, *a good many of them*, different from his importations, a sample of which thread lace, shown him by Mr. Coxe, the witness recognized, saying: "That is *one* kind, certainly—Saxony. It is what is called a thread collar."

Mr. Coxe then put these questions, answered as appears:

"Q. Is not that a lace which is bought and sold "under the name of thread lace in your store?

"A. As far as that goes, you have got black silk "laces also which are sold under the name of thread "lace.

"Q. And you also have white linen laces, have you "not?

"A. Certainly; we must have a name for every "article.

"Q. Is not that the article?
"A. That is thread lace.
"Q. As known in trade and commerce?
"As known in trade and commerce.

The sample last referred to was marked "Exhibit 10."

The plaintiffs then rested.

The Government first called as a witness DUNCAN A. GRANT, who testified to an experience of forty-five years in the lace business in the City of New York.

He then testified in substance as follows: There was a kind of lace made of *linen* or linen and cotton bought and sold in this country, under the name of thread lace, in 1861 and thereabouts and down to 1875. Exhibit 10 is *one* of the articles so known. It is a thread-lace collar. I am acquainted with the names under which articles represented by Plaintiffs' Exhibits 8 and 9 were bought and sold. I understand them to be woven torchon lace. By woven torchon I mean machine-made torchon as distinguished from hand-made torchon.

BY MR. CURIE:

"Q. Mr. Grant, is that *the only kind* of lace that is known as thread lace (showing witness Exhibit 10)?

"A. No, sir. *There are a very great number of* LACES *known as thread lace.*

The direct examination being resumed, the witness testified; The other kind of thread laces are made, some of them silk; *mostly of linen*, however. There are also laces made of cotton that are *called* thread; Valenciennes lace is *called* thread; it is *considered* thread, and made of cotton. Some Valenciennes laces are made of linen.

"Q. But this [Ex. 10] is the kind of lace called linen thread lace?

"A. I think, if you will allow me to express myself

for a word there, that it is *more generally* applied to real lace.

"Q. When you say real lace, what do you mean by that?

"A. Made in that way.

"Q. Hand-made lace?

"A. Yes, sir; or made by the point needle. Point lace is made by the needle instead of spools. I mean by real lace hand-made pillow lace, or made by the point needle. Point lace is made by the needle instead of spools."

After recess the Government called WILLIAM TREVOR for the defense, who testified to eighteen years' experience in the lace business, commencing in 1868.

He testified that plaintiff's importations were known as "torchons;" that from 1868 to 1875 there was a well-known article in trade and commerce known as thread lace, made of linen. He selected Exhibit 10 from the samples as such a lace, saying, "That is a thread lace." He stated that thread lace is always hand-made; not made on a machine, but on a cushion or pillow, indicating Exhibit 10 as such article. That if a person came in where he was selling laces and asked for a thread lace he should never think of taking down any such thing as Plaintiff's Exhibit 9, but "out of all that collection (of sample exhibits) I should take down that one article (Exhibit 10) for thread lace."

He said hand-made torchons were worth at least three times as much as machine-made torchons of same width and degree of fineness. *He identified Exhibit 11 as a hand-made torchon.*

Upon cross-examination he reiterated that Exhibit 10 was the only one he would hand down as a thread lace, and said *he would not call Exhibit 11*—the hand-made torchon—*a thread lace.*

Re-examined by Mr. COXE, after repeating that the distinguishing characteristic of thread lace was that it was made by hand, and not by machinery, he was

asked (by Mr. Coxe) this question, and gave the subjoined answer :

"Q. In that view, do you want to qualify your testimony with regard to Exhibit 11 or not?

"A. If you want to know what is thread lace, according to my knowledge and my experience extending over twenty years, I will say that there is only one thing in this collection that I can pick out as thread lace, or which is known commercially as thread lace, and that is this collar" (Exhibit 10).

Defendant's counsel then read the definitions of the words lace and thread from Webster's Dictionary, edition of 1849, as follows:

"Lace: A work composed of threads interwoven into a net and worked on a pillow with spindles or pins."

"Thread: A very small twist of flax, wool, cotton, silk, or other fibrous substance drawn out to considerable length."

The defendant then rested.

No further testimony being offered except proof of the amount paid in excess of the rate on thread lace and *the Treasury regulations of 1857*, the United States Attorney requested the Court to direct a verdict for the defendant, and the plaintiffs claimed to go to the jury. The Court directed a verdict for the defendant and the plaintiffs excepted.

Thereupon the counsel for the plaintiffs did then and there, on behalf of said plaintiffs, except to the decision, ruling and instruction of the Court instructing the jury to render a verdict for the defendant, and to his refusal to submit the cause to the jury, an exception being noted as to each such request and refusal.

The paragraph read from the Treasury Regulations of 1857, at top of page 573, was this :

"Laces, thread, composed principally of cotton, with a partial mixture of flax or linen thread. No such arti-

cle was in existence at the date of the passage of the Tariff Act of 1846, and it was first manufactured after the lapse of more than a year from that date. It cannot, therefore, be held to be the article on which that act imposes a duty as 'thread lace.' *The only article known in commerce as 'thread lace' at the date of the passage of the Act of 1846 was composed exclusively of flax or linen thread.*"

Assignment of Errors.

The plaintiffs in error assign for error;—

1. The Court's direction and instruction to the jury, to render a verdict for the defendant. (Rec. 12, and 7 bottom.)

2. The disallowance of the plaintiffs' claim to go to the jury and the Judge's refusal to submit the cause to the jury. (Rec. 12.)

3. The judgment entered against plaintiffs, upon the verdict so directed and rendered. (Rec. 8.)

Statutes.

The goods were unquestionably dutiable under one or the other of these two contiguous clauses of Schedule C of Section 2504 of the Revised Statutes; the first being that applied to them by the Collector, and the second that claimed by the importers to be applicable. (Rec. 9.)

(1.) "Flax or linen thread, twine and pack-thread, and all other manufactures of flax, or of which flax shall be component material of chief value, not otherwise provided for: forty per centum *ad valorem*. (Heyl, § 961, end.)

(2.) Thread lace and insertings: thirty per centum

ad valorem." (Heyl, § 962; R. S. (2d Ed.) 462–3, being reproduction of Act of June 30, 1864, C. 171, § 7, 13 Stats. 209.)

POINTS.

Though we think the established character and composition of our importations entitled us to a verdict, the issue presented upon this record is the narrower one—whether sufficient evidence had not been introduced to require the submission of the cause to the jury.

I.

Whenever *technical* terms are used, or an article is specially designated by its commercial *name* (as 'bohea, burlap, gilling-twine, still wines, or sparkling wines, etc., etc.), resort must necessarily be had to that art to which the terms pertain, in order to ascertain their meaning. This is no more true of tariffs than of all legislation. But where the language, nomenclature, and broad distinctions of common life are indicated (as shawls, wearing-apparel, cotton, thread, lace, etc.), the construction must accord with common usage. Nor, in the absence of proof of a well-known, *definite*, *general* trade-usage, will it be assumed that there is any difference between the speech of everyday life and that in which the transactions of commerce are conducted.

Swan vs. Arthur, 103 U. S. 598 mid.
Schmeider vs. Barney, 113 *Id.* 648 top.
Robertson vs. Solomon, 130 *Id.* 415 near top.

Thus was the rule of construction long ago laid down by this Court, with reference to this very subject;

"The effort has been to substitute for the literal and lexicographical and popular meaning of the phrase 'wearing apparel,' some supposed mercantile or commercial signification of these words, and to render subservient to that signification what was clearly accordant with the etymology of the language of the statute, with the essential purposes and action of the Government, and with the widespread, if not the universal understanding of all who may not happen to fall within the range of a limited and interested class. In instances in which words or phrases are *novel* or *obscure*, as in terms of art where they are peculiar or exclusive in their signification, it may be proper to explain or elucidate them by reference to the art or science to which they are appropriate; but *if language which is familiar to all classes* and grades and occupations—language, the meaning of which is impressed upon all by the daily habits and necessities of all—*may be wrested from its established and popular import* in reference to the common concerns of life, there can be little stability or safety in the regulations of society. * * *

"It would seem to be a most extravagant supposition which would hold that, in the enactment of a law affecting the interests of the nation at large, the Legislature should select for that purpose language by which the nation, or the mass of the people, must necessarily be misled. *The popular or received import of words furnishes the general rule for the interpretation of public laws* as well as of private and social transactions; and whenever the Legislature adopts such language in order to define and promulge their action or their will, the just conclusion from such a course must be, that they not only themselves comprehended the meaning of the language they have selected, but have chosen it with reference to the known apprehension of those to whom the Legislative language is addressed, and for whom it is designed to constitute a rule of conduct, namely, the community at large.

Maillard vs. Lawrence, 16 How., *261.

This language is applicable to the words "thread

lace and insertings," as they were employed in the statute under which our goods were imported.

This was the Act of 1861 (12 Stats. 190) this line being a reproduction of the Act of 1846 (9 Stats. 47 bottom) in which it first appeared.

"The term," in the Revised Statutes, "must be given the same meaning it had in the original act. *Congress* has nowhere manifested an intention of using it in a different sense."

U. S. vs. Perryman, 100 U. S., 236.

The earlier tariffs were framed to place duties upon imports only in the most general terms.

The Act of 1792 (1 Stats. 259) laid ten per cent. duty upon all "laces"; that of 1824, twenty-five per cent. upon "coach laces," and half that rate upon all other laces. (4 Stats. 25, 27.)

The tariff of 1846 (9 Stats., 42, 47) put thirty per cent. upon laces of gold, silver, etc.; twenty-five per cent. upon "cotton laces, cotton insertings," etc.; and twenty per cent. upon "thread laces and insertings." In this act the subjects of duty were alphabetically arranged in schedules, each schedule being composed of those paying the same rate, gold laces being in Schedule C, cotton laces and cotton insertings in Schedule D, and thread laces and insertings in Schedule E.

The Act of 1857 reduced the rates upon these schedules; C to twenty-four per cent., D to nineteen per cent. and E to fifteen per centum. (11 Sts. 192.)

Following the alphabetical arrangement and phraseology of the Act of 1846, the twentieth section of the Act of March 2, 1861, put the duty at twenty per cent., both upon "cotton laces and cotton insertings" and upon "thread laces and insertings". (12 Stats. 189, 190.)

Ten per cent. additional was put on by Act of July 14, 1862, § 6. (12 Stats. 550.)

When the Act of June 30, 1864, "to increase duties

upon imports," was adopted, the necessities of war compelled a more careful examination into and specification of the multitudinous subjects of duty than had ever been made before. The chief articles of importation were (generally) enumerated and classified, for the first time, under separate sections, each relating to one material, of which the specified goods were composed. (13 Stats. 202 to 218.)

Section 6 is devoted entirely to cotton; concluding thus,

"On cotton braids, insertings, lace * * * and all other manufactures of cotton, not otherwise provided for, thirty-five per centum *ad valorem*." (*Id.* 209.)

The next section (7) was that embracing goods of linen, jute and hemp; but it was not (nor was the act) exhaustive, and made no provision for "thread laces and inserting" *(Ib.)* which remained dutiable at twenty per cent. under the Act of 1861, plus the ten per cent. added July 14, 1862, as above indicated. Thus was the item carried into the revision; "Thread lace and insertings, thirty per centum *ad valorem*" (R. S. 2d Ed. p. 463, first line).

Here, the classification by schedules, embracing each a distinct component material, was methodized and avowed; *i. e.*, Schedule A, Cotton; B, Earths; etc., etc. "Thread lace and insertings" appropriately comes under Schedule C, devoted to "Hemp, Jute and Flax Goods." Schedule H is entitled, "Silk and Silk Goods;" and Schedule L, "Wool and Woolen Goods."

Of this consolidation of earlier statutes, a writer familiar with this subject observes:

"§ 18. The Revised Statutes of the United States, enacted June 22, 1874, brought about a consolidation and harmonious arrangement of *the laws in force*, both as to the practice governing the ascertainment and collection of duties and as to the rates." Elmes' Law of Customs, 8.

It was under the Revised Statutes that our goods were imported; hence, we are relegated to the reproduced Act of 1861 to learn the meaning of the language there adopted from the Act of 1846. (100 U. S., 236.)

U. S. vs. Lacher, 134 U. S., 626-7.
Roosevelt vs. Maxwell, 2 Blatc., 395.
De Forest vs. Lawrence, 13 How., 274.

Until the existence of a different and more restricted commercial meaning of the term "thread lace" is shown, we may fairly assume the popular and lexicographical import of it is the sense in which it was employed in revenue laws (16 Howd. *261).

Arthur vs. Morrison, 96 U. S. 110 bot.
Greenleaf vs. Goodrich, 101 *Id.* 285 top.

To refresh the recollection of the Court, and inform the minds of jurors, we introduced the dictionary definitions of this phrase;—*i. e.*, "Thread-lace; lace made of *linen* thread" (Rec. 9, fol. 19).

It is thus defined, as the record states, not only by Webster's popular dictionary, but by the *dictionaries of trade-terms* of Simmons and of McElrath. In other words, the common meaning is the trade meaning; the legal presumption, that they are the same, is corroborated.

The title page of the last-named work states its author to have been "late chief appraiser of foreign merchandise for the Port of New York," etc.

The book was published in 1871; but its preface declares that, in 1861, its author, in the discharge of his official duties,

"first discovered the need of some book which might be conveniently referred to for the meaning of unfamiliar terms contained in foreign invoices, AND *for the technical signification or import of certain words and phrases used in mercantile transactions.*" McElrath, Com. Dict., Pref. p. IV.

He adds that he availed himself of the obvious advantages of his official position to provide such a book, "a comprehensive dictionary of commercial words." Commencing the work in 1861, he devoted to it the leisure of the succeeding ten years. *(Ib.)* Along with other information, as to weights, measures, forms, &c., he says he has given "the names of most of the commodities in dealt as articles of commerce, * * * definitions of mercantile terms;"

"while the laws and usages of trade, and *the restricted but definite meaning of common words when used in commerce*, are here presented and defined." *(Id.* VI.)

Accordingly, defining "thread-lace," as meaning in trade and commerce (as it does generally) "lace made of *linen* thread, black or white" he *quotes:* "ALSO, 'laces made of linen and cotton combined, and known in commerce as thread laces.' Guthrie's Abstract of Treasury Decisions." *(Id.* 535, *h. t.)*

This Treasury decision conformed to the ruling in the case of

Lottimer vs. Lawrence, 1 Blatch. 613,

Which the Court will perceive relates to *machine-made* lace.

The General Regulations of the Treasury Department at page 573, in the paragraph read at the trial of our case (*ante*, p.) declared that, *because* the only thread-lace known to commerce in 1846 was composed exclusively of flax or linen thread, no later-devised manufacture containing cotton could be admitted under the thread-lace duty.

Judge NELSON held (1 Blatch. 614) that, although such lace was not imported till after 1846 (so not then known by *any* designation), yet, if it was commercially known as thread-lace, from the time it did come into existence as an import, it must be so dutied.

In the Lottimer case, cotton was the chief compo-

nent; but this Court substantially followed Judge NELSON'S ruling, in a case where silk material was used.

Arthur vs. Lahey, 96 U. S. 112.

Reference to the transcript of that cause will show that A. T. Stewart, and other witnesses, testified that "thread lace" was originally all flax; that, between 1835 and 1840, cotton began to be substituted (to some extent) for flax, the lace being commercially known as thread lace; that the combining, or substitution, of other material with, or instead of, flax increased, because of the greater facility with which silk or cotton took the dye, the yellowish tinge of pure flax being difficult to overcome. These substitutes or combinations were "commercially" known as "thread laces;" but *it was not then pretended that all flax laces were not thread.* It was conceded that they *were*, commercially and in fact; while claiming that others might be proved to be so *in commercial usage*, though *not* so in fact according to common apprehension. This is the position for which we now contend. We claim we have established our right to enter these goods at 30%, when we have shown their material to be *linen* thread; admitting the same rate to be *also* applicable to other goods, of different material, commercially *called* thread lace. Our goods come in at 30% as thread laces, because they *are* such; the others, because they are so called. Such is the effect of the decisions.

Ten years ago, referring to the Act of 1846, in which "thread laces and insertings" first appeared, this Court said,—

"The designations qualified by the word 'cotton,' in the Act of 1846, are designations of articles by *special description*, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material."

Barber vs. Schell, 107 U. S. 621.

We perceive no reason why that statement (mani-

festly correct) is not equally true of the qualifying word "thread" in that same act, or of "silk" in the eighth section of the Act of 1864. (96 U. S. 112.)

At that trial, it was proved (*inter alia*) "that thread lace made of linen had been practically unknown for many years." (*Id.* 114 mid.)

But the next case in which the question arose was one of laces made of that very material; "*torchons*," like plaintiffs' here; of which, it was then proved

"that torchon laces, though a very old kind, and not imported to any considerable extent until within a few years past, were *generally known* as thread laces, AND *were such in fact*."

Smith vs. Field, 105 U. S. 53.

This notices that some laces, like our torchons, are thread "in fact," while others are so because thus "generally known."

The next paragraph (*Ib.*) states that some laces (known as English, etc.) were supposed to be of linen, but really chiefly of cotton; and "that *torchon laces were not known as 'thread laces,'* but ONLY by their special designation." (*Ib.*)

The jury gave their verdict for the plaintiffs. (*Id.* 54 top.)

That torchons was their *only* trade designation did not change their dutiable character, if in *fact* of thread.

This Court (96 U. S. 110 bottom) has quoted this language of WOODRUFF, C. J.;—

"Where general terms are used, the terms are to be taken in their *ordinary* and *comprehensive* meaning, unless it is shown that they have, in their commercial use, acquired a special and restricted meaning."

Lottimer vs. Smythe, 17 Int. R. Rec. 12.

Reference is there (96 U. S. 110 bottom) made to the

opinion of the same Circuit Judge in another case, where he charged ;—

"When the terms used in a tariff act are general, they include all the subordinate or special kinds of the goods so generally described, notwithstanding that dealers and others, in speaking of a particular kind of such goods, commercially describe them usually by a specific name ; thus, in Section 8 of the Act of June 30, 1864, the term 'silk' [thread] before the articles therein enumerated (*e. g.* "silk vesting * * * laces, * * * etc."), in the absence of any other consideration than the terms of the statute, embraces all laces made of silk [linen thread] ; and to restrain or limit this meaning it is not enough that witnesses say, that, in commerce, a thing included in the *general designation* is usually or *universally* spoken of by its specific, particular name. But *specific names*, when used in tariff acts, are to be construed according to their general use in trade and commerce. And proof as to the commercial designation of an article named in a tariff must go to show that the name of the goods in question is identical with the specific term used in the statute. For instance, proof that a silk lace is known in trade as "*black* thread lace" does not take it out of the duty laid upon it in 1864, as silk lace, and subject it to duty under a prior act designating "thread lace." Unless the goods in question were themselves *specifically* known as "thread lace," to distinguish them from other laces made of silk (in which case Congress must be presumed to recognize the distinction), they were dutiable at sixty per cent., *ad valorem*, under Section 8 of the Act of June 30, 1864.

Jaffray vs. Murphy, 19 Int. Rev. Rec. 143.
Drew vs. Grinnel, 115 U. S. 481 end of Op.

If thread lace were *simply* 'a specific name' no article could be assessed for duty as such unless specifically known by that name in trade and commerce ; but as also a 'general designation,' it includes all those innumerable varieties of style and quality and method which are each indicated by its own special name, but which all possess the common quality of being lace made of linen thread.

By reason of their resemblance to such laces, some made of other material may have been brought, for commercial and tariff purposes, within this general designation; but that would not, of itself, crowd out those which, by use of the designated material, come fairly and properly within it.

But it does not concern us here to consider what else this term includes. It suffices that it does include all "laces made of linen thread."

That it does so, we may add *arguendo*, to the authorities read upon the trial, reference to *every* dictionary, popular, scientific or *commercial*, and every encyclopedia, English or American, which makes any specific mention of or describes thread lace, as defining it only in strict accordance with our contention.

So far as a very diligent search can discover, *not a hint can be found in any book upon the subject of the existence of any such distinction* (as to the effect of method of manufacture upon nomenclature) *as is the sole basis of the defense to this action.*

It does not exist, and has never existed, outside the prejudiced minds and imagination of interested (so-called) experts, who disagree with each other upon this point, as we shall show in the next division of this brief discussing especially our right to go to the jury with this case.

It is not claimed by the Government that, as to laces of linen, there has been any change in the meaning, ordinary or trade, of the term 'thread lace,' since 1861, or its first appearance in the tariff of 1846. In the strife and multiplication of dictionaries, and the consequent effort and effect to make them accurate and comprehensive, if there were any such *general* and *well-defined* trade-meaning (and only such is recognized) attached to this term, it would surely have found a place in *some* dictionary, popular or technical, as telegram, ohm, and other such words have.

Indeed, it is too strange to be easily credited, that

such distinction or restricted meaning existed in the Port of New York during the entire ten years that Chief Appraiser McElrath's attention was specially directed towards these subjects (to secure correct *trade* definitions for his book) without having come to his knowledge. Yet it is the meaning recognized at least as early as 1861 that we must apply.

"Thread lace;—lace made of *linen* thread" is Webster's sole definition. 4 Imper. Dict., p. 361, *h. t.*

"Lace made of linen thread, as distinguished from blond lace" (which is elsewhere defined, "lace made of *silk*.") Worcester's Dict.
4 Cent. Dict., p. 3321.

"Lace of linen thread; such as Honiton, and many other kinds." 3 Knight's Am. Mech. Dict., 2559.

These are definitions according to *material*. The distinctive names which indicate *mode of manufacture* are appropriate to *that* end.

"Lace is divided into (1) needle-point, and (2) pillow-lace, and (3) imitation of both made on a machine."
XIV Enc. Brit., 183.
Stormouth Dict. ("Lace," note).

The District-Attorney's reading of the several definitions of 'thread' and 'lace' (Rec. 12 top) had no more application to the issue, than would an attempt, by looking at the separate definitions of 'horse' and 'chestnut,' to learn the characteristics of a 'horse-chestnut;' or of a chestnut horse!

From those definitions *(Ib.)* one might as well infer that our importations were not *lace* as that they were not *thread* lace.

Pursuing an effort to ascertain a meaning by derivation, he would have found the word 'thread' to have come from the Anglo-Saxon verb 'thraw-an,' to twist, "because *thread* is *flax*, slightly turned or twisted." Richardson's Dict., *h. t.*

The futility of any attempt to fix the dutiable classification of any article, which poverty of language designates by a compound name, by reference to the meaning of that word's components was forcibly shown by the late Justice BRADLEY, in Meyer vs. Arthur, 91 U. S. 577, end of Op.

There is no occasion for resort to trade usage, where the term employed is not technical. Story on Cont. §§ 794 and 801.

Thread lace no more requires elucidation than tar or type-metal. Primarily it *only* meant, and it still means lace made of linen thread, with different trade-names to indicate species of the genus 'thread lace.'

All torchons are thread laces; but all thread laces are not torchons. 'Torchon' is a specific trade name.

To use a witness' illustration (Rec. 9–10), a hat is, a hat, whether made of silk, fur, wool, cotton or other material; though a customer must call for a silk hat, straw hat, or such a one as he desires. That hats are invoiced, bought and sold as Derbys, will not prevent such a hat being of wool. Derby is the trade name; hat is not.

Had Congress dutied our goods as 'torchons,' recourse would have been necessary to trade terminology to ascertain its meaning; but it has not done so.

When our imports were sampled by the appraiser, he perceived them to be lace, known as 'torchons.' He would look in vain for this name in the statute. But he also perceives that they are composed wholly of linen thread. Recurring to the flax schedule of the tariff he finds there 'thread lace,' etc.—which fits it exactly.

Certainly, this designation is a much closer fit than the omnium gatherum 'manufactures of flax.'

The hand-made torchon is three times (at least) as expensive as the machine-made (Rec. 11, fol. 22) although, as the Ency. Brit. states, they can be distinguished

from each other by an expert. We could naturally infer, what the books tell us, that the hand-made laces do not constitute a tithe of the whole quantity made or imported. Is it conceivable that Congress made specific provision only for the one-tenth (say) and left the nine-tenths to merge with "other manufactures of flax"?

Manifestly, the cheaper, more abundant article is that consumed by the common people; while the vastly more expensive hand-made (really, no better) is the luxury of the wealthy, Can Congress be supposed to have made a ten per cent. discrimination of rate in favor of the latter? This is an argument of construction thus employed by this Court in Movius vs. Arthur, 95 U. S. 148 bottom.

Comparing the schedules and the general purport of the act, can Congress be supposed to have intended that a silk lace (because made by hand) to come in at 30%, and all machine-made linen laces to pay forty per centum?

That the Treasury Department did not so understand in 1857, the quoted paragraph of the Regulations declares; nor did Judge NELSON in 1861 (1 Blatch., 613). It was not till ten or a dozen years later that an effort was successfully made to bring in silk laces as thread, because so known (96 U. S. 112). Then it was vainly attempted to exclude linen torchons from a provision universally conceded to have applied to them in 1846. (105 U. S., 53).

Curtis vs. Martin, 3 How., 110.
Tyng vs. Grinnell, 92 U. S., 470.

As the camel, whose head was hospitably admitted to the Arab's tent, gradually intruded his whole body, and crowded out the proprietor, it was finally claimed that, because silk, etc., had been sworn in, linen conceded to be the original subject, must go out. Such was evidently Mr. Trevor's idea.

In the first tariff revision, after this clause of the acts

of 1846 and 1861 had been so stretched and distorted, Congress again manifested its purpose to duty strictly according to material, irrespective of methods of manufacture, by placing this 30 per cent. upon "flax or linen laces and insertings."

Act of 1883, Sched. J. (22 Stats. 507.)

II.

We are entitled to have our cause submitted to the jury.

In opening his defense, the District Attorney conceded that the popular, dictionary meaning of the words was against him, and supported our claim; but rested his defense upon his ability to prove that the usages of trade had restricted and changed this meaning. The facts hereinbefore shown left him no other course to pursue.

To substitute for the meaning in which the language would ordinarily be taken some restricted interpretation requires proof of some *definite*, well-known and *general* trade usage to that effect. 2 Greenl. on Ev., §§ 251–2, and authorities *passim*.

Oelrichs vs. Ford, 23 How. 49.
Garrison vs. Memphis, 19 *Id.* 317.
Claflin vs. Robertson, 38 F. R. 93.
Sidenberg vs. Same, 41 *Id.* 765–6.
Dodge vs. Hedden, 42 Id. 447 bot.
Wood vs. Wood, 1 C. & P., 59 173.
Collings vs. Hope, 3 Wash. 149.

It is not an *opinion* but *facts* that are to establish usage. 2 Gr. on Ev. § 252.

Allen vs. Mcht. B'k., 15 Wend. 488–9.
Haskins vs. Warren, 115 Mas. 535.
Austin vs. Taylor, 2 Ohio, 64.

It has formerly been held by many eminent courts that *one* witness would not suffice to establish a usage (2 Wend. 504; 9 Pick. 426; 13 Allen, 259; 23 Ills. 566; 1 Const. 150; 3 Wash. 350). This Court and later cases in Massachusetts and New York rule otherwise (13 Wall. 366; 128 Mass. 587; 5 N. Y. 159).

But the language of these later opinions is noticeable (as well as that of STORY, J. in the Reeside, 2 Sumn. 569) as applicable to the evidence which the Court below considered a sufficient basis for a directed verdict against us.

"We cannot assert *as a rule of law* governing proof of usages of trade, that if a witness have a *full knowledge*, and a long experience on the subject about which he speaks, and testifies explicitly to the *antiquity, duration* and *universality* of the usage *and is uncontradicted*, the usage cannot be regarded *by the jury* as established. On the contrary, the authorities are that *in such a case* it may be."

Robinson vs. U. S., 13 Wall. 366.

"The circumstance that but one witness testifies to a usage *is important* only as bearing upon the credibility and satisfactoriness of his testimony in point of *fact*," etc.

Jones vs. Hoey, 128 Mass. 587.

As noticed, Mr. Grant's testimony did *not* exclude our goods from the category of thread laces (Rec. 10, 11.) The utmost stretch to be given his testimony (and it is a question for the jury if it will bear that strain, even) is that the term "linen thread lace" is "that it is *more* generally applied to real lace," *i. e.* hand-made. (*Ib.* 10.) That witness thinks it is so applied "more generally" than otherwise—in a *majority* of instances. *This* does not establish a usage contrary to the plain, ordinary meaning of the statutory language; it lacks "universality."

Mr. Trevor knew nothing of the term prior to 1868; nothing as to 1846, or 1861 when the statute applied

to our goods was enacted. He denies point lace to be thread lace, and is contradicted flatly and antagonizes his own definition by his exclusion of hand-made torchons. Certainly, "the credibility and satisfactoriness of his testimony in point of fact" was for the jury.

To establish this more clearly, we will (at the expense of being repetitious) restate the testimony, with reference to its character, as requiring its submission to the jury.

By Webster's Dictionary, plaintiffs showed the ordinary meaning of "thread lace"; then, by the commercial dictionaries, confirmed the legal presumption that the term conveyed the same idea in trade and commerce; especially, by McElrath's dictionary and the Treasury Regulations of 1857 that such was its meaning at the Port of New York and elsewhere when and after the Acts of 1846 and 1861 were passed; by the stipulated admission that, originally, the Government had claimed that none of our goods were thread laces, but subsequently, upon examination and full consideration, had receded from that position and refunded ten per cent. upon all our hand-made torchons, because these were thread lace, within the meaning of the statute.

This was in accordance with Smith vs. Field, 105 U. S. 53.

We claimed this concession to be most credible evidence that *some* torchons were thread lace.

Mr. Meyrheim testified to these goods being linen or thread lace, though universally bought and sold as torchons (see Judge Wodruff in Jaffray vs. Murphy, *ante*, p.) this being a division of the general article, as "derby" is of a hat. He knew there were many other laces, different from his, known as thread laces, of which he recognized one, a "Saxony," which was put in as Exhibit 10. (Rec. 9, 10.)

The Government called but two witnesses; the first was Mr. Grant, who testified that the thread lace collar,

Ex. 10, was *one* of the articles known under the name of thread lace in 1861 and thereafter; that he knew our laces to be woven or machine torchons, and the names under which they were bought and sold, *which he did not state*, nor was he asked to do so (Rec. 10, bottom). He said there were a very great number of laces known as thread lace *(Id.)* mostly of linen, some silk, and also cotton; "*considered* thread and made of cotton." The next passage of his testimony (Rec. 11, top) is obscure, but cannot possibly be construed *more* adversely to plaintiffs than by treating it as saying that "thread lace" was "MORE GENERALLY" applied to real (*i. e.* hand-made) lace than to any other.

Nobody can read Mr. Grant's page of testimony and say that any *definite*, well-known, *general* trade usage to exclude machine laces from the category of thread laces was established by *this* witness (Rec. 10, 11.)

The only other governmental witness was Mr. Trevor, whose experience as an expert did not run back to 1861, much less to 1846. (We appreciate fully the great difficulty, even in that great city, of finding a man who was in business there in 1861, let alone 1846.)

"He testified that plaintiff's importations were known as 'torchons';" (certainly) "that, from 1868 to 1875, there was a well-known article in trade and commerce known as thread lace, made of linen." He selected the "Saxony" collar, Exhibit 10, as such a lace; and refused to acknowledge any other of the sample exhibits as being so; further, while insisting that all thread laces were hand-made, on a pillow or cushion (thus excluding point lace, made with a needle) he would not admit that all hand-made linen lace was thread lace; for, identifying Exhibit 11 as a hand-made torchon, he refused, both upon cross-examination and re-direct, to recognize its title to be called a thread lace, although apparently to the District-attorney coming within the scope of the definition of thread lace. (Rec.

11.) Exhibit 11 was a sample of the very importations originally included in this suit, upon which the collector gave us our refund, *pendente lite*, because satisfied from the best information he could obtain that our claim was, to that extent, well-founded. Though these goods were thus dropped out of the issue, yet this testimony is important, as discrediting the expert testimony, and showing there was no definite, general, well-known trade-usage to apply the term "thread lace" to *all* hand-made laces, even if of linen; but that some further test existed in the mind of this witness to the establishment of the right of a hand-made linen lace to this name. Method of manufacture was not the sole test. Torchons are made of coarse thread; so, apparently, this witness would require an unexplained degree of fineness in a hand-made linen lace, before he would admit it to *his* mental collection of thread laces. Had not Congress, in the Act of 1883, reiterated its purpose to duty all laces and insertings of flax or linen according to material, we should soon have had many domestic "experts" testifying to *fineness* being an element in the trade-nomenclature as to thread lace.

In the few exceptional instances in which Congress has desired to make *mode of manufacture* a test of dutiable imposition, it has said so plainly; 'knit goods,' 'made on frames,' 'made up by the tailor,' etc., etc.

The defendant's action in refunding upon our hand-made torchons was put in evidence before the jury, *quantum valebat*. It was a fact, of which we were entitled to the benefit, if any, upon the trial.

After we had indisputably shown the popular definition of thread lace, and had shown that the trade dictionaries declared its commercial meaning to be the same, there was certainly doubt enough as to the meaning and effect of the language of defendant's witnesses; enough of disagreement between them, and of antagonism in Mr. Trevor's testimony to the admission contained in defendant's act of refunding, to entitle us to

go to the jury upon the question whether there was sufficient evidence of a uniform, general, definite, well-known trade usage to restrict the application of the term 'thread lace' within narrower limits than those of the ordinary meaning assigned to it in every book of authority, popular or technical, which assumes to define that term.

Whether the article imported is the one upon which duty is laid by the statutory term, or is different therefrom, is a question for the jury.

Lawrence vs. Allen, 7 How. 797.
Tyng vs. Grinnell, 92 U. S. 470 bot.
Arthur vs. Herold, 100 *Id.* 78 top.
Wills vs. Russell, *Id.* 629.
Recknagle vs. Murphy, 102 *Id.* 197.
Smith vs. Field, 105 Id. 53 bot.

The Judge had no right to direct a verdict upon his own understanding of the facts upon which other cases had been decided by a jury. In no case, had it ever before been brought in question, whether or not a lace in *fact* of thread should be excluded from the benefit accorded thread laces because of the method of manufacture.

Barney vs. Schmeider, 9 Wall. 248.

All such questions, dependent upon testimony and facts variant in character should be determined by the jury, especially where there is a conflict, or the statements are by persons interested, or the mere expression of "expert" opinion.

Tyler vs. Boston, 7 Wall. 327.
Carver vs. Hyde, 16 Pet. 513.
Keyes vs. Grant, 118 U. S. 25.

The slight credit to be awarded expert testimony has become fully appreciated. 1 Taylor on Ev. § 58.

Winans vs. N. Y., 21 How. 101
Mitchell vs. Tighlman, 19 Wall. 411 bot.
Allen vs. Hunter, 6 McLean, 303.
Tracy Peer., 10 C. & F. 191.

The Court should not have usurped the function of the jury by passing upon the *effect* of evidence, not consistent with itself, obnoxious to just criticism, and contradicted by other testimony.

Baylis vs. Travellers, 113 U. S. 316.
Morgan vs. Gay, 19 Wall. 81.
Greenleaf vs. Birth, 9 Pet. 292.

It can hardly be imagined that, upon the evidence presented in *this* case, a verdict in our favor would be set aside.

Phœnix vs. Doster, 106 U. S. 30, 32 and cits.
Montclair vs. Dana, 107 *Id.* 162.
Randall vs. B. & O. 109 *Id.* 478.
Conn. vs. Lathrop, 111 *Id.* 612.
Marshall vs. Hubbard, 117 *Id.* 415.
North vs. Conn. Bk. 123 *Id.* 733.
Humiston vs. Wood, 124 Id. 12.

We are confident this Court will remand this cause, to afford the learned Judge who tried it an opportunity to submit it to a jury with proper instructions corresponding to those he gave in later tariff cases, hereinbefore cited from 38 Fed. Rep. 93 ; 41 *Id.* 765–6 ; and 42 *Id.* 447 bottom.

WILLIAM STANLEY,
EDWIN B. SMITH,
STEPHEN G. CLARKE,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

SIEGMUND MEYERHEIM ET AL., PLAINTIFFS IN ERROR,
vs.
WILLIAM H. ROBERTSON, LATE COLLECTOR. } No. 279.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE DEFENDANT IN ERROR.

The plaintiff in error having made a very elaborate statement and argument of this case in most of its relations, counsel for the defendant in error begs to limit the discussion on his part to a direct consideration of the single question involved, as it is presented in the record.

THE COURT DID NOT ERR IN DIRECTING A VERDICT FOR THE DEFENDANT.

The proposition maintained on the part of the Government is that machine-made torchons were in 1881 and 1882 dutiable at the rate of 40 per centum ad valorem under

that clause of the tariff act which required that rate upon imported "manufactures of flax or of which flax shall be the component material of chief value."

The plaintiffs claim that they were entitled to enter these torchons as "thread lace" upon the payment of a duty of 30 per cent.

It is admitted (folio 18) that the torchons were made by machinery; therefore they were not handmade lace.

It is admitted (*id.*) that the torchons were manufactured out of linen thread; therefore they were "manufactures of flax." The fact may be stated for what it is worth, if it is worth anything, that the importations consisted in part of handmade and in part of machine-made torchons, and that the Secretary of the Treasury reduced the duty exacted upon the handmade torchons to 30 per cent by a refund of the excess collected.

The item of "thread laces and insertings" appears in the act of July 30, 1846 (9 Stats., 47) in the list of articles rated at a 20 per cent duty.

The same item also appears in the 20 per cent list in the tariff act of March 2, 1861 (12 Stat., 190).

In the Revised Statutes (p. 463, top) the words used are "thread lace and insertings: thirty per centum ad valorem."

I do not find the flax provision of the Revised Statutes in the act of 1846, but there is in the list, dutiable at 30 per cent, an item of "manufactures of cotton, linen, silk, wool, or worsted, if embroidered or tamboured * * * and there is an item of "twines and pack-thread, of whatever material composed," in the same schedule.

But in the act of July 30, 1864 (13 Stat., 209, Sec. 7), this paragraph is inserted:

> On flax or linen thread, twine, and pack-thread, and all other manufactures of flax, or of which flax shall be the component material of chief value, not otherwise provided for, forty per centum ad valorem.

And this paragraph is incorporated without change into Schedule C of the Revised Statutes (p. 462, foot).

It will be seen therefore that, although these paragraphs are now found together in the revision, they had not a common origin.

Now was the judge justified in directing the jury to find for the defendant, or, in other words, in holding that from the evidence submitted the necessary conclusion was that these flaxen machine-made torchons were dutiable as "manufactures of flax," and not as "thread lace?"

Webster defines torchon lace as "A simple thread lace worked upon a pillow with coarse threads; also, a similar lace made by machinery." (Interna., 1519.)

The same authority employs "lace" as a generic term, defining lace as: "A fabric of fine threads of linen, silk, cotton, etc., often ornamented with figures; a delicate tissue of thread, much worn as an ornament of dress."

At the foot of page 9 of the record, the attorney for the plaintiffs manages to testify in the case, and does so as follows:

> Q. What I mean is that "torchon" is a division of the general article of thread lace, just as a derby is a division of the word hat?

And the plaintiff—witness, makes a safe answer by responding:

"Yes; exactly."

Yet even the attorney did not presume to go so far as to say that these torchons were not a subdivision of the "manufactures of flax;" or that the words "thread lace" do not include laces of silk, cotton, worsted, etc.

The plaintiff testifies (fol. 19, end) that the torchons, put in evidence by sample, were "all machine-made; that he never heard them bought and sold as thread laces, but only as torchons, invariably so called." And that he knew many thread laces. Therefore, he admits that these torchons are not thread laces.

On the cross-examination (fol. 20), he says that white linen lace is a thread lace as known to trade and commerce.

The witness, Grant, called by the defendant, testified that "there was a kind of lace made of linen, or linen and cotton, bought and sold in this country under the name of thread lace, in 1861 and thereabouts and down to 1875. Exhibit 10 is one of the articles so known. It is a thread-lace collar." He states the goods in controversy to be woven torchon lace; machine-made torchon as distinguished from hand-made torchon.

The exhibit 10 mentioned is claimed on the part of the Government to be real thread lace; No. 9 was from the torchon importation. This witness says: "There are a very great number of laces known as thread lace."

He says that some of these thread laces are made of silk and that some are made of cotton that are called

thread. That "Valenciennes lace is called thread; it is considered thread and made of cotton. Some Valenciennes laces are made of linen."

He speaks of *real* lace, and defines "*real lace*" as "*thread lace*," a handmade lace, made by hand or by the point needle; and continues: "Point lace is made by the needle instead of spools. I mean by real lace handmade pillow lace, or made by the point needle. Point lace is made by the needle instead of spools."

The witness, William Trevor, a lace dealer of eighteen years' experience, testified that the importations were torchons, and that from 1868 to 1875 there was a well-known article in trade and commerce known as thread lace, made of linen. He declared Exhibit 10 to be such a lace and said: "That is a thread lace."

The record then continues (fol. 22): "He stated that thread lace is always handmade; not made on a machine, but on a cushion or pillow, indicating Exhibit 10 as such article. That if a person came in where he was selling laces and asked for a thread lace, he should never think of taking down any such thing as plaintiffs' Exhibit 9, but 'out of all that collection (of sample exhibits) I should take down that one article (Exhibit 10) for thread lace.'"

He said that handmade torchons were worth at least three times as much as machine-made torchons of the same width and degree of fineness.

This is all there is of the case at bar.

No evidence is given in the record to shake the strength or break the force of the testimony quoted.

There was no question for the jury, and the court acted in accordance with the rules of law and the practice of trial courts in directing a verdict for the defendant.

It is respectfully submitted that the judgment should be affirmed.

A. X. PARKER,
Assistant Attorney-General.

O